

CAMPAIGN TERMS

Unless expressly agreed otherwise, these Campaign Terms (these “**Terms**”) are incorporated into the Insertion Order entered into between MOBKOI and the Buyer and govern the Buyer’s purchase of Inventory from MOBKOI in connection with the Campaign.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms:

“**Agreement**” means the Insertion Order and these Terms;

“**Advertiser**” means the advertiser identified in the IO;

“**Advertisement**” means an advertisement that incorporates the Buyer Assets and is capable of being delivered to the Inventory (for example, a banner, video, audio, or mobile advertisement);

“**Agency**” means an advertising or media buying agency that acts on behalf of the Advertiser identified in the IO;

“**Advertising Regulation**” means any applicable industry regulation (including self-regulation), code of practice, adjudication, decision, requirement, guideline, direction or rule in relation to electronic and online advertising, sponsorship and other forms of promotion (including the British Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing and the and the codes, rulings, determinations and requirements of an Advertising Regulator), as modified, extended or replaced from time to time;

“**Advertising Regulator**” means any regulatory (including self-regulatory) body that is responsible for issuing, regulating, controlling and/or enforcing compliance with Advertising Regulation, including (as applicable) the Advertising Standards Authority, the Committee of Advertising Practice, Trading Standards, Ofcom, the Medicines and Healthcare products Regulatory Agency and the Gambling Commission;

“**Applicable Laws**” means all applicable laws and regulations, including the Advertising Regulations and the Data Protection Legislation;

“**Brand**” means the name, term or other feature given to the Advertiser’s product(s) and/or service(s) (or categories of product(s) or service(s)), as may be identified in the IO;

“**Business Day**” a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“**Buyer**” means the person that enters into the IO (being either the Advertiser or the Agency);

“**Buyer Assets**” means any promotional, sponsorship and/or advertising material of any type (including images, graphics, text, data, sound recordings, links or other creative elements), together with any associated Buyer Marks, relating to the Advertiser and/or Brand, together with any Tracking Technologies, which are supplied or otherwise made available to MOBKOI by or on behalf of the Buyer and are to be incorporated into the Advertisement, in each case in accordance with these Terms;

“**Buyer Approver**” means the person specified in the IO as being the Buyer’s point of contact (and any other person that expressly or by implication has authority to approve matters on behalf of the Buyer in relation to the Agreement);

“**Buyer Marks**” means the trade names, logos, trademarks, services marks, trade dress and any similar proprietary marks and/or rights relating to the Advertiser and/or Brand;

“**Campaign**” means the organised programme for the Buyer’s purchase of Inventory from MOBKOI and the serving of the Advertisements to End Users in the Territory, as further described in the IO;

“**Campaign End Date**” means the date on which the Campaign is intended to end, as specified in the IO (which may be extended by the written agreement of the Parties);

“**Campaign Start Date**” means the date on which the Campaign is intended to commence, as specified in the IO;

"Campaign Term" means, subject to earlier termination in accordance with the Agreement, the period commencing at 00:00 (local time in the Territory) on the Campaign Start Date and ending at 11:59 (local time in the Territory) on the Campaign End Date;

"Confidential Information" means all information of whatever nature or form that is disclosed (whether in writing, verbally or otherwise), obtained or created, under or in connection with the Agreement (whether prior to or after the Effective Date) which is of a confidential or proprietary nature including: (a) the existence, terms and subject matter of the Agreement, and the negotiations relating to it; and (b) the following information relating to either of the Parties or their affiliated companies: (i) information regarding their business, affairs, and business plans; (ii) price lists, pricing structures, sales and marketing plans; (iii) information about employees, officers and other personnel; (iv) information about current and prospective clients, customers and suppliers; (v) know-how, trade secrets, inventions, products, operations, processes, product information and unpublished information relating to intellectual property rights; and (vi) any other commercial, financial or technical information;

"CPM" means cost per 1,000 (one thousand) Impressions;

"Data Protection Legislation" means all applicable data protection and privacy laws, regulations, directives and rules, including, as applicable, (i) the UK Data Protection Act 2018, the UK GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) the GDPR and the EU Privacy and Electronic Communications Directive (2002/58/EC); and (iii) all local laws or regulations of jurisdictions in the European Economic Area implementing or supplementing the GDPR;

"Digital Property" means any website, mobile application, mobile website or other type of digital property that is owned and/or operated by a Publisher;

"End User" means a human visitor to a Digital Property;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

"Good Advertising Standards" means compliance with Advertising Regulation and the standards set out in Appendix 1 to these Terms;

"IAB TCF" means the IAB Europe's Transparency & Consent framework (as may be updated, amended, superseded or replaced by any other industry-standard framework from time to time);

"IAB TCF Policies" means the most up to date version of the IAB TCF policies (located at <https://iabeurope.eu/iab-europe-transparency-consent-framework-policies/>);

"Insolvency Event" means any of the following circumstances affecting a Party: (a) a proposal is made for any composition, scheme or arrangement with its creditors; (b) it is unable to pay its debts as they fall due; (c) any step is taken to appoint a trustee, receiver, administrative receiver, administrator, liquidator or similar officer over all or any part of its business or assets; (d) any security interest is enforced against it; (e) any steps are taken for its liquidation or winding-up other than a solvent amalgamation or reconstruction; (f) it ceases or threatens to cease to carry on all or any material part of its business; (g) a meeting of its creditors is held or convened for the purpose of considering any of the above events; or (h) any event similar to those set out above occurs under the laws of any relevant jurisdiction;

"Inventory" means advertising space offered for sale by (or on behalf of) Publishers on Digital Properties, on which Advertisements are capable of being served to End Users;

"Impression" means a single instance of an Advertisement being served to an End User via the Inventory, as measured by MOBKOI in accordance with these Terms, always (1) excluding automated page refreshes; and (2) including a video Advertisement served with any companion banner;

"Insertion Order" or **"IO"** means an insertion order that is agreed between the Parties in writing, under which the Buyer purchases Inventory from MOBKOI, and which may specify (amongst other information) in relation to one or more Campaigns: (a) the type and quantity of the Impressions to be served via the Inventory, (b) the Purchase Price, (c) Campaign Start Date and Campaign End Date; and (d) any other terms that are agreed between the Parties in respect of the Campaign;

"Losses" means losses, damages, liabilities, claims, costs and expenses, including fines, penalties, legal and other professional fees and expenses;

"MOBKOI" means MOBKOI Limited, a company incorporated and registered in England and Wales with company number 09045201 and with its registered office address at 151 Rosebery Avenue, London, England, EC1R 4AB;

"Order Date" means the date on which the IO has been executed by both Parties or, if earlier, the date specified on the IO;

"Purchase Price" means the net cost (on a CPM basis) of the Inventory that the Buyer has agreed to purchase, less any agreed discount, in each case as specified in the relevant IO;

"Representative" means the sales manager of MOBKOI identified in the IO;

"Parties" means MOBKOI and the Buyer (and "Party" shall have a corresponding meaning);

"Publisher" means the person that owns or operates a Digital Property on which Advertisements are served;

"Territory" means the territory to which the Campaign is targeted (based on End User IP addresses and/or URL or target audience of the relevant Digital Property), as specified in the IO;

"Term" has the meaning given in clause 2.2;

"Transaction Currency" means the currency specified in the IO;

"Tracking Technology" means any technology that can be used to store information (whether personal data or otherwise), or to gain access to information stored, in the terminal equipment of an End User (including code, cookies, javascript, pixels and tags);

"VAT" means value added tax or any equivalent tax chargeable in the UK or elsewhere; and

"Virus" means any thing or device (including any software code, file or programme) that may prevent, impair, harm, cause the malfunction of, or otherwise adversely affect the access to and/or operation of any software, hardware or data, equipment, network or any other service or device (including the reliability of any programme or data) or adversely affect the user experience, including worms, trojan horses, bugs, harmful code, and viruses.

1.2 In these Terms:

- (a) any reference to "approval" to be given by the Buyer shall mean the Buyer giving approval in writing via the Buyer Approver (and "approved" shall have a corresponding meaning);
- (b) a reference to a clause is a reference to a clause of these Terms;
- (c) the headings used in these Terms are for convenience only and shall not affect the interpretation or construction of these Terms.
- (d) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (e) a reference to writing or written includes email but not fax.
- (f) words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender.
- (g) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (h) references to any English legal term or legal concept shall in respect of any jurisdiction other than England be deemed to include that which most approximates in that jurisdiction to such English legal term or legal concept.
- (i) a reference to any statute, statutory provision, enactment, order, regulation or other instrument shall include (i) any subordinate legislation made under it, (ii) any provision that it has modified or re-enacted (whether with or without modification), and (iii) any provision that subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the Order Date.

- (j) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2 AGREEMENT

- 2.1 On execution of an IO by the Parties, the IO together with these Terms constitute the Agreement made between MOBKOI and the Buyer in relation to the Buyer's purchase of Inventory to its Campaign, as specified in the IO. If and to the extent there is any conflict or inconsistency between these Terms and an IO, the Terms shall prevail unless expressly stated otherwise in the IO.
- 2.2 The Agreement shall be deemed to have commenced on the Order Date and, unless terminated earlier in accordance with these Terms, shall automatically expire on the last Campaign End Date ("**Term**").
- 2.3 The Buyer warrants and represents that it contracts with MOBKOI as principal and undertakes to perform all obligations of the Buyer under the Agreement as principal, including where the Buyer is an Agency and/or is acting on behalf of an Advertiser in a representative capacity.
- 2.4 The Buyer warrants and represents that all information set out in the IO is accurate and complete and meets the Buyer's requirements in relation to the Campaign.

3 BUYER ASSETS AND ADVERTISEMENTS

- 3.1 The Buyer grants to MOBKOI a perpetual worldwide, non-exclusive, transferable, sub-licensable and royalty-free licence, and all necessary permissions and/or consents required (with full right to sub-license), to reproduce, modify, alter, transmit, display and use the Buyer Assets in accordance with the Agreement.
- 3.2 The Buyer shall ensure that the Buyer Assets will be provided to MOBKOI:
- (a) promptly (and in any event, not less than ten (10) Business Days prior to the relevant Campaign Start Date); and
 - (b) in accordance with any technical and/or other requirements made available by MOBKOI to Buyer from time to time (which may be updated at MOBKOI's discretion).
- 3.3 The Buyer shall provide MOBKOI with full and clear written instructions as to its requirements in relation to MOBKOI's use of the Buyer Assets. MOBKOI shall use the Buyer Assets to produce the Advertisement(s) in accordance with the reasonable requirements provided by the Buyer Approver(s) in writing and as otherwise agreed between the Parties in writing.
- 3.4 MOBKOI will submit the Advertisement(s) to the Buyer Approver(s) for approval. The Buyer shall, without undue delay and in any event by no later than two (2) Business Days of MOBKOI's submission of the Advertisement for approval, confirm in writing that the Advertisement is approved (or provide reasonable objections).
- 3.5 Where the Buyer provides reasonable objections to the Advertisement pursuant to clause 3.4, the Parties shall work together in good faith to attempt to resolve the Buyer's objections.
- 3.6 If the Buyer's final approval has not been received by MOBKOI by 17:00 (local time in the relevant Territory) on the date that is three (3) Business Days prior to the Campaign Start Date, MOBKOI may (at its discretion and by written notice to the Buyer) either:
- (a) cancel the Campaign;
 - (b) elect to postpone the Campaign Start Date; or
 - (c) to the extent it has not received any objections from the Buyer, deem the Advertisement to be approved.
- 3.7 Where MOBKOI cancels the Campaign or postpones its commencement pursuant to clause 3.6:
- (a) in the case of a postponement, MOBKOI shall use commercially reasonable endeavours to deliver (or cause to be delivered) the agreed quantity of Impressions, but MOBKOI shall not be liable for any under-delivery to the extent such under-delivery is caused by the delay; and

- (b) the Buyer shall remain fully liable to pay the Purchase Price in respect of all Impressions set out in the IO (including any under-delivered or, in the case of a cancellation, non-delivered Impressions), except in the case of a cancellation as a result of Buyer approval being withheld on the basis of reasonable objections to the Advertisement pursuant to clause 3.4.
- 3.8 The Buyer's approval of Advertisement's will be MOBKOI's authority to publish (or cause to be published) the Advertisement's via the Inventory with effect from the Campaign Start Date. The Buyer shall be entitled to request amendments to the Advertisements following such approval, including during the Campaign Term. MOBKOI shall use commercially reasonable efforts to accommodate such amendments, but any amendments are not guaranteed.
- 3.9 MOBKOI shall not be liable for any loss or damage to the Buyer Assets.

4 DELIVERY AND MEASUREMENT OF IMPRESSIONS

- 4.1 Subject to the Buyer's compliance with the Agreement and clause 5.5, MOBKOI shall use commercially reasonable endeavours to deliver (or cause to be delivered) the Impressions during the Campaign Term and in accordance with the Agreement.
- 4.2 The Buyer acknowledges that the quantity of Impressions set out in the IO is an estimate of the minimum number of Impressions that MOBKOI may deliver during the Campaign Term. Unless otherwise agreed, the Buyer shall be under no obligation to pay the Purchase Price in relation to any Impressions that are delivered in excess of that minimum number of Impressions.
- 4.3 Delivery of Impressions will be measured by or on behalf of MOBKOI (or by any relevant third-party ad-server) to determine whether an Impression has been validly served and whether the Purchase Price is payable. MOBKOI shall provide the Buyer with Campaign reporting in accordance with the relevant invoicing schedule, and MOBKOI's invoices shall be generated in accordance with clause 6 on the basis of such measurement. For the avoidance of doubt, such measurement is final and shall apply to the exclusion of any measurement undertaken by the Buyer.

5 AMENDMENTS, CANCELLATIONS AND PUBLISHER REQUIREMENTS

- 5.1 Subject to any express amendment and/or cancellation rights set out in the Agreement, if either Party wishes to cancel or make any amendment to a Campaign, any such cancellation or amendment shall be subject to the written agreement of both Parties.
- 5.2 The Buyer shall be entitled to postpone the Campaign Start Date or cancel a Campaign (or any element of it) on written notice to MOBKOI at any time prior to the Buyer's provision of the Buyer Assets (as described in clause 3.1) to MOBKOI.
- 5.3 Where:
 - (a) the Campaign Start Date is postponed pursuant to clause 5.2, the Parties shall agree to either postpone the Campaign End Date for an equal duration or maintain the same Campaign End Date (in which event the Parties may agree further amendments to the Campaign, including to reduce the number of Impressions that shall be delivered during the Term);
 - (b) the Campaign is cancelled pursuant to clause 5.2, MOBKOI will not deliver the Advertisements to the Inventory and the Buyer shall be under no obligation to pay the Purchase Price.
- 5.4 The Buyer shall be entitled to suspend or cancel a Campaign (or any element of it) at any time after the Buyer's provision of the Buyer Assets (including after the Campaign Start Date), in which event:
 - (a) MOBKOI will, as soon as is reasonably possible, give effect to the cancellation by ceasing to deliver the Advertisement's to the Inventory; and
 - (b) the Buyer shall remain fully liable to pay the Purchase Price in respect of all Impressions set out in the IO (including, for the avoidance of doubt, the Impressions that were not delivered after MOBKOI ceased to deliver the Advertisement's to the Inventory).
- 5.5 Notwithstanding anything else in the Agreement, final discretion to deliver Impressions is reserved to the Publisher (or their representatives) and may be subject to additional terms, requirements and/or policies (including relating to the

Buyer Assets and/or Advertisements, and Campaign amendment and/or cancellation) of a Publisher that may change on little to no notice to MOBKOI. If MOBKOI cannot fulfil a Campaign in accordance with the Agreement because the relevant Digital Property or Inventory is unavailable, the Advertisement and/or Campaign breaches the Publisher's terms, requirements and/or policies, or a Publisher rejects, declines or amends any aspect of a Campaign for any other reason, MOBKOI reserves the right to amend or cancel the Agreement to the extent effected. MOBKOI will use commercially reasonable endeavours to consult with the Buyer in advance and to purchase alternative Inventory in accordance with the Buyer's preferences.

- 5.6 Without prejudice to any other right of MOBKOI under the Agreement, MOBKOI shall be entitled to cancel a Campaign at any time and for any reason. Where MOBKOI exercises this right and the Buyer has pre-paid the Purchase Price in relation to Impressions not yet delivered, MOBKOI shall issue a refund to the Buyer in relation to the non-delivered Impressions.

6 PAYMENT

- 6.1 The Buyer shall pay the Purchase Price in respect of:
- (a) Impressions that have been determined to be served in accordance with clause 4; and
 - (b) Impressions that have not been delivered, where specified in these Terms.
- 6.2 Payment of the Purchase Price and any other sum payable under the Agreement shall be made in accordance with this clause 6.
- 6.3 MOBKOI shall be entitled to invoice the Buyer for the Purchase Price:
- (a) where the relevant Campaign Term is 60 days or more, at any time after the month in which the relevant Impressions were served (i.e. MOBKOI will submit invoices monthly in arrears); or
 - (b) in all other cases, on expiry of the Campaign Term.
- 6.4 The Purchase Price and other sums payable under the Agreement shall be paid to MOBKOI in cleared funds to a bank account nominated in writing by MOBKOI, within 30 days of the date of MOBKOI's invoice (or within such other timeframe as may be specified in the IO). Time for payment shall be of the essence.
- 6.5 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in the Transaction Currency;
 - (b) are non-refundable, except as expressly stated otherwise in the Agreement; and
 - (c) are exclusive of any applicable value added tax or similar tax, which shall be added to MOBKOI's invoice(s) at the appropriate rate and is payable at the same time as the underlying sum.
- 6.6 Each Party shall pay all monies which are payable by it to the other Party without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other Party.
- 6.7 If the Purchase Price or any other sum payable to MOBKOI under the Agreement remains overdue by 14 days or more, without prejudice to MOBKOI's other rights or remedies, MOBKOI shall be entitled to:
- (a) charge an administration fee of £25 (or the equivalent amount in the Transaction Currency); and/or
 - (b) charge interest (calculated daily) on overdue amounts at a rate equal to 4% per annum above the base rate of HSBC Bank plc in force from time to time; and
 - (c) suspend the delivery of Impressions in relation to the Campaign or terminate the Agreement with immediate effect on written notice to the Buyer (at MOBKOI's discretion).
- 6.8 Where MOBKOI suspends delivery of Advertisements pursuant to clause 6.7(c), on delayed payment by the Buyer of the relevant sum MOBKOI shall use commercially reasonable endeavours to deliver (or cause to be delivered) the agreed quantity of Impressions, but MOBKOI shall not be liable for any under delivery to the extent such under delivery is caused by the suspension. The Buyer shall remain fully liable to pay the Purchase Price in respect of such under-delivered Impressions.

7 DATA PROTECTION AND TRACKING TECHNOLOGIES

- 7.1 Each Party will comply with obligations applicable to it under Data Protection Legislation. Each Party shall provide such cooperation and assistance as the other Party may reasonably require to ensure that the Parties comply with the Data Protection Legislation in relation to the Agreement.
- 7.2 Each Party is an independent controller in relation to personal data that it processes under or in connection with the Agreement. For the avoidance of doubt, the Parties each acknowledge and agree that MOBKOI does not process any personal data on behalf of the Buyer, and the Parties are not joint controllers of any personal data, under or in connection with the Agreement.
- 7.3 Where the Buyer wishes to collect (or cause to be collected) information (whether or not such information is personal data) through the use of any Tracking Technologies contained within an Advertisement:
- (a) the Buyer shall first obtain MOBKOI's prior written approval in respect of such proposed use, which shall be conditional on the Buyer's compliance with the remainder of this clause 7.3;
 - (b) the Buyer shall provide MOBKOI with the name of the proprietor of the Tracking Technology and a description of the Tracking Technology (including the purposes for which it is used), and such other information as MOBKOI or a Publisher may reasonably require;
 - (c) unless otherwise expressly agreed in writing, the Buyer shall only use Tracking Technologies of persons that are registered as a 'Vendor' under the IAB TCF (a list of which is available at <https://iabeurope.eu/vendor-list-tcf/>) and whose registration covers the information collected via the Tracking Technologies and the purposes for which it is processed;
 - (d) the Buyer shall ensure that the Tracking Technologies and its use of information comply with Applicable Laws and, where applicable, the IAB TCF Policies;
 - (e) unless otherwise expressly agreed in writing, Tracking Technologies may not be used to create profiles for personalised or targeted advertising or to personalise content (as described in the IAB TCF Policies (Purposes 3 and 5));
 - (f) ;
 - (g) the Buyer shall ensure that any necessary consents or opt-outs have been obtained from (or otherwise that a lawful basis has been established, where the information is personal data), and fair processing information has been provided to, End Users in respect of such Tracking Technologies and information, in accordance with Data Protection Legislation;
 - (h) the Buyer shall ensure that the Tracking Technologies do not involve the processing of any personal data that may be considered as 'special category personal data', 'sensitive' or data that relates to children/minors (in each case as interpreted by the Data Protection Legislation); and
 - (i) MOBKOI shall use commercially reasonable endeavours to facilitate the Buyer's use of such Tracking Technologies, but:
 - (i) MOBKOI makes no representations, express or implied, as to the lawfulness of the use of such Tracking Technologies or a Publisher's (or a Publisher's consent management platform's) compliance with Data Protection Legislation, and MOBKOI shall otherwise have no responsibility in respect of such Tracking Technologies; and
 - (ii) nothing in the Agreement shall prevent a Publisher from blocking the operation of any Tracking Technologies.

8 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 8.1 Each Party represents, warrants and undertakes (on an ongoing basis) that:
- (a) it has the power and authority (including, in the case of the Buyer and where applicable, of the relevant Advertiser) to enter into and perform its obligations under, and to grant the rights set out in, the Agreement; and

- (b) its entry into the Agreement and performance of the Agreement will not violate or conflict with, or exceed any limit imposed by: (i) any Applicable Law to which it is subject; (ii) its memorandum and articles of association; or (iii) any other agreement, instrument or undertaking binding upon it.
- 8.2 The Buyer represents, warrants and undertakes (on an ongoing basis) that the use by MOBKOI of the Buyer Assets, and the publication of the Advertisement(s) on the Inventory, will not infringe the rights (including intellectual property rights and rights to privacy) of any person.
- 8.3 The Buyer warrants, represents and undertakes (on an ongoing basis) that the Buyer Assets and the Advertisement(s), including the collection of any information via the use of Tracking Technologies that are embedded in (or otherwise used in connection with) the Advertisements, will:
 - (a) comply with Applicable Laws and Good Advertising Standards;
 - (b) will not, when used in accordance with the Agreement, cause MOBKOI or a Publisher to breach any Applicable Laws; and
 - (c) not contain any Viruses or impair or harm the computer systems or network of MOBKOI, a Publisher or any third party involved in the delivery of an Advertisement.
- 8.4 MOBKOI shall be entitled, without incurring liability to the Buyer, to reject and/or refuse to publish any Advertisement(s) where MOBKOI reasonably considers that the Buyer is in breach of the warranties, representations and undertakings set out in this clause 8 or if the Buyer Assets and/or Advertisement(s) otherwise do not comply with the Agreement. Publication of the relevant Advertisement does not constitute MOBKOI's acceptance that the relevant Advertisement(s) and/or Buyer Assets are compliant with the Agreement or Applicable Laws.

9 TERMINATION

- 9.1 Either Party may immediately terminate the Agreement (and the relevant Campaign) without liability by giving notice in writing to the other Party if:
 - (a) the other Party commits a material breach of any of its obligations under the Agreement that is incapable of remedy;
 - (b) the other Party fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the Agreement for 30 (thirty) days after having been required in writing to remedy or desist from such breach; or
 - (c) the other Party suffers an Insolvency Event.
- 9.2 Termination or expiry of the Agreement for whatever reason shall not affect:
 - (a) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and/or
 - (b) the continued existence and validity of the rights and liabilities of the Parties under those clauses that are expressed to, or by implication are intended to, survive termination or expiry.
- 9.3 On termination or expiry of the Agreement for whatever reason, each Party shall deliver to the other Party or destroy (as directed by the other Party) any Confidential Information of the other Party that is in its possession or control.

10 LIABILITY AND INDEMNITY

- 10.1 Except as provided in the Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement.
- 10.2 Nothing in the Agreement shall exclude or in any way limit:
 - (a) the Buyer's obligation to pay the Purchase Price or any other sums due under the Agreement;

- (b) a Party's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 10.3 Subject to clause 10.2, neither Party shall be liable under or in relation to the Agreement (howsoever arising and including as a result of breach of contract, tort (including negligence) or statutory duty) for:
- (a) any direct or indirect (i) loss of profits; (ii) loss of contracts; (iii) loss of business; (iv) loss of goodwill; or (v) loss or corruption of data; or
- (b) any indirect, special, incidental, or consequential loss or damage of whatever nature and howsoever caused, even if the relevant Party has been advised of the possibility of such damages or losses (provided that nothing in this clause (b) shall be deemed to limit or exclude liability for direct loss or damage).
- 10.4 Subject to clause 10.2, MOBKOI's maximum aggregate liability under or in connection with the Agreement (howsoever arising and including as a result of breach of contract, tort (including negligence) or statutory duty) shall not exceed the greater of (a) £50,000; or (b) an amount equivalent to sums paid or payable by the Buyer to MOBKOI in respect of the relevant Campaign.
- 10.5 Neither Party shall be in breach of the Agreement or otherwise liable to the other Party to the extent that it is delayed in or prevented from performing its obligations under the Agreement as a result of the other Party's acts or omissions or any act, event, non-happening, omission or accident that is beyond the performing Party's reasonable control. Without prejudice to MOBKOI's obligations under clause 5.5, the following are events that are outside MOBKOI's reasonable control:
- (a) the rejection of an Advertisement or a Campaign in whole or in part by a Publisher for any reason, including for breach of the Publisher's policies or other requirements from time to time;
- (b) any relevant Digital Property or Inventory is unavailable or defective;
- (c) the selection of a third party's advertisement in preference to the Buyer's Advertisement for any reason; and
- (d) the position and display of an Advertisement on a Digital Property.
- 10.6 The Buyer shall indemnify MOBKOI and keep MOBKOI indemnified against any and all Losses, that MOBKOI may suffer or incur as a result of any claim from a third party in respect of any breach or alleged breach by Buyer of its obligations under the Agreement (including, where applicable, any act or omission of an Advertiser that would constitute a breach by the Buyer of its obligations under the Agreement if such act or omission were made by the Buyer). MOBKOI will:
- (a) promptly notify Buyer in writing of such claim (provided that any failure by MOBKOI to notify will not relieve Buyer of its obligation to indemnify MOBKOI, except to the extent that Buyer can demonstrate material prejudice from such failure);
- (b) not make any admission of liability, settlement or compromise without the prior written consent of Buyer;
- (c) give Buyer express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such claim (subject to the Buyer regularly consulting MOBKOI on the conduct and defence of the claim);
- (d) provide Buyer with all available information and assistance in relation to such claim as the Buyer may reasonably require, at the Buyer's cost and expense,
- provided that, if, within ninety (90) days after Buyer's receipt of the notice referred to in (a) above, Buyer fails to take action to defend or settle such claim, MOBKOI may at Buyer's expense undertake the defence, compromise, or settlement of the claim as it sees fit.
- 10.7 The Buyer shall maintain in force a comprehensive insurance policy and/or policies free from restrictions or excess with a reputable insurance company or companies to cover liability for any claim which may at any time be made in connection with the Agreement. The Buyer shall provide to MOBKOI within five (5) Business Days of any request a copy of the certificates of insurance confirming the details of the cover provided.

11 CONFIDENTIALITY

- 11.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under the Agreement. A Party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving Party;
 - (b) was in the other Party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4 **Error! Reference source not found.**, each Party shall hold the other's Confidential Information in confidence and shall not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than as strictly necessary to perform its obligations under the Agreement. Any disclosure of Confidential Information to a third party shall be made subject to obligations at least as onerous as those set out in this clause **Error! Reference source not found.**
- 11.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 11.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12 PUBLICITY

- 12.1 Neither Party shall make any public statement relating to the Agreement or the relationship between the Parties without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 12.2 Notwithstanding clause 12.1 or anything else in these Terms, MOBKOI shall be entitled during and after the Term to use and publish the Buyer Marks and Advertisements (to the extent that the same have been broadcast, published, distributed or otherwise made available to the public pursuant to the Agreement) for the purposes of promoting its work and its business, including on MOBKOI's website, in credentials and in other promotional and marketing materials.

13 NOTICES

- 13.1 Unless expressly provided otherwise, all notices and other communications to be given under the Agreement must be in writing and shall be delivered by hand (including by courier), pre-paid first class post or other next day delivery service, or pre-paid airmail to the Party's address specified above or such other physical address as that Party may notify to the other from time to time. Such notice shall be deemed to have been received:
- (a) if delivered by hand, at the time of delivery;
 - (b) if sent by UK pre-paid first class post or other next day delivery service to a UK postal address, at 9.30 a.m. on the second clear day after the date of posting;
 - (c) if sent by pre-paid airmail, at 9.30 a.m. on the fifth clear day after the date of posting.
- 13.2 Notwithstanding clause 13.1, notices (except for notices of termination or breach) may be given by email (sent with a delivery receipt request) to the following addresses and shall be deemed to have been received at the time recorded in the delivery receipt:

If to MOBKOI

The email address of the MOBKOI Representative set out in the IO;

If to Buyer

The email address of the Buyer Approver(s)

14 GENERAL

- 14.1 Unless expressly stated in the Agreement, nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties or authorise either Party to make or enter into any commitments for or on behalf of the other Party.
- 14.2 No purported alteration or variation of the Agreement shall be effective unless it is in writing, refers specifically to the Agreement and is signed by each of the Parties.
- 14.3 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 14.4 If any provision of the Agreement is held to be invalid or unenforceable by any judicial or other competent authority, all other provisions of the Agreement will remain in full force and effect and will not in any way be impaired. If any provision of the Agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 14.5 A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 No person other than a Party shall have any right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any term of the Agreement.
- 14.7 Neither Party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement, save for the transfer of rights and obligations by MOBKOI to an associated company of MOBKOI in the event of a reorganisation of MOBKOI's group of companies.
- 14.8 The Agreement and the documents expressly referred to in these Terms (including, for the avoidance of doubt, the IO) contain the entire agreement between the Parties in relation to its subject-matter and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to its subject matter.
- 14.9 The Agreement and the documents expressly referred to in these Terms shall apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 14.10 Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind the Agreement because of a breach of any warranty not contained in the Agreement, or any misrepresentation whether or not contained in the Agreement.
- 14.11 Nothing in this Agreement shall exclude liability for fraudulent misrepresentation.
- 14.12 In the event of an actual or reasonably anticipated breach of this Agreement by Buyer, MOBKOI shall be entitled to seek to obtain from a court of appropriate jurisdiction immediate injunctive or other equitable relief to which it may be entitled under the circumstances in addition to other remedies allowed under this Agreement or Applicable Law
- 14.13 The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.14 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

APPENDIX 1

GOOD ADVERTISING STANDARDS

Advertisements should:

- be factually correct and not fraudulent, misleading or deceptive;
- not involve the use of aggressive commercial practices or contravene the Consumer Protection from Unfair Trading Regulations 2008 or any other law or regulation that aims to protect consumers from unfair or misleading trading practices;
- comply with the requirements of all relevant laws and regulations applicable in the United Kingdom and any other territory where the Advertisement is served, including the British Code of Advertising Practice and the codes, rulings, determinations and requirements of the Advertising Standards Authority or other Advertising Regulators;
- not contain, or contain links to, content which (1) promotes or advertises illegal or immoral activity or which promotes discrimination, pornography; racism, hate, "spam", mail fraud, pyramid schemes or firearms, or (2) encourages the use of illegal drugs or drug paraphernalia, or the misuse of legal and/or prescription drugs, including alcohol and tobacco;
- not constitute a financial promotion (or similar) within the meaning of the UK Financial Services and Markets Act 2000 (or similar applicable laws and regulations), unless where the Advertisement complies with the requirements of that Act (and any other applicable laws and regulations);
- not constitute unfair competition, be libellous, defamatory, contrary to public policy, or otherwise unlawful in the territory in which the Advertisement is served;
- not infringe or violate any copyright, trade mark, any personal or proprietary right or the privacy or confidentiality rights of any person;
- not be obscene, offensive, indecent, threatening, menacing, abusive;
- not contain any names or pictorial representation (photographic or otherwise) of any living person and/or any copy by which any living person is or can be identified, unless the relevant advertiser has obtained all necessary consents from such living person to make use of such name, representation and/or copy; and
- comply with any other requirements of a Publisher as notified to the Buyer from time to time.